

County Courts (Ireland) Bill.

ARRANGEMENT OF CLAUSES.

Clause.

1. Service of process.
2. Proceedings for recovery of costs and balance of sum claimed.
3. Forgery of summons, &c. of county court.
4. Jurisdiction of judge within or without his districts.
5. Attachment of debts.
6. Interpleader orders.
7. Orders on sheriff to make returns.
8. Seizure of goods claimed by third party.
9. Enforcement of instalment order.
10. Proof in actions of debt or other liquidated demand not exceeding 20*l.* by affidavit. Amendment of section 59 of 40 & 41 Vict. c. 56.
11. Affidavit for renewal of decree may be sworn by clerk or agent of party seeking renewal and by secretary of limited company.
12. Persons before whom affidavits may be sworn.
13. Decrees to be in force for two years without renewal.
14. The time for appealing from decrees of Recorder of Dublin shall be six days, to run from actual date of decision.
15. Justification of recognizances in appeals.
16. Appointment of guardian or next friend of lunatics and persons of unsound mind.
17. Prosecution of appeal after abatement by death.
18. Defendant may tender in respect of claim of plaintiff.
19. Omission or misstatement of address or residence of a party not to render process, decree, or dismiss void.
20. Amendment of section 56 of 40 & 41 Vict. c. 56.
21. Partners and firms.
22. Firms of solicitors.

[Bill 71.]



Classe.

23. Appeals at winter assizes for Belfast and county Antrim.
24. Rule-making authority.
25. Audit of account or stamp duties, court fees, moneys paid into court, &c.
26. Interpretation.
27. Short title and construction.
28. Commencement of Act.
29. Repeals.

SCHEDULE.

A

B I L L

TO

Amend the Law relating to County Courts in Ireland. A.D. 1911.

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

5 1.—(1) Service of process of the county court shall be ^{Service of process.} effected in the manner directed or permitted by law, unless otherwise ordered by the judge, who may order service to be substituted, or that service already had or accepted by a solicitor on behalf of a defendant shall be deemed good service, as the case may be.

10 (2) Service of a default process upon a corporation or upon a limited company may be effected by service upon the secretary or local manager of such corporation or limited company at any place of business of such corporation or limited company within the jurisdiction of the county court.

15 (3) The plaintiff or party levying a decree, if resident within the United Kingdom, may be served in the prescribed manner with an interpleader process under section one hundred and fifty of the Civil Bill Courts (Ireland) Act, 1851, or under this Act, in any part of the United Kingdom, or service may be 20 effected by serving the solicitor of the plaintiff being the solicitor by whom such decree was obtained, or lodged for execution.

25 (4) In interpleader proceedings under the Civil Bill Courts (Ireland) Act, 1851, or under this Act in respect of goods seized under execution, the interpleader civil bill or other proceeding may be made returnable within the prescribed time for any day of any sitting of the then current or next sitting of the county court

A.D. 1911.

for the division in which the seizure was made, and the defendants shall be liable to be sued therein, notwithstanding anything contained in section 69 of the Civil Bill Courts (Ireland) Act, 1851, and the judge shall have power to adjourn the hearing to another town or division within any of his jurisdictions. 5

Proceedings
for recovery
of costs and
balance of
sum claimed.

2. Where a defendant in any action, at any time after issue of the civil bill, pays to the plaintiff or to his solicitor the entire amount sued for, but without costs, the plaintiff may obtain a decree for the costs of such action; and where a defendant pays a part only of the sum sued for, the plaintiff may continue the 10 proceedings for the balance, and if he obtains a decree for the same or any part thereof he shall be entitled to the costs of the action, to be taxed as if the decree were for the aggregate of the sum paid on account and the sum for which such decree was actually given. 15

Forgery of
summons,
&c. of
county court.
[See 51 & 52
Vict. c. 43.
s. 180.]

3. Every person who forges any summons, civil bill, petition, decree, or order of the county court, or any document originating proceedings therein, or who serves or enforces any such forged summons, civil bill, petition, decree, order, or document originating proceedings, knowing the same to be forged, or delivers or 20 causes to be delivered to any person any paper purporting to be a copy of any summons, civil bill, petition, decree, or order of the county court, or document originating proceedings therein knowing the same to be false, or who acts or professes to act under any false colour or pretence of the process or authority of the county 25 court, shall be guilty of an offence against the County Courts (Ireland) Acts, 1851 to 1889, and shall be liable on summary conviction to a fine not exceeding *fifty pounds*, or to imprisonment with or without hard labour for a term not exceeding six months. Any offence under this section may be prosecuted before a court 30 of summary jurisdiction in manner provided by the Summary Jurisdiction Acts.

Jurisdiction
of Judge
within or
without his
districts.
[See 51 & 52
Vict. c. 43.
s. 9.]

4. A judge shall, whether within the district of any of his courts or not, have jurisdiction to make any order or exercise on an ex parte application any authority or jurisdiction in any 35 action, suit, matter, or proceeding pending in any of the courts of which he is judge, which he could make or exercise ex parte within the district of any of his courts, and, with the consent of both parties to an action, suit, matter, or proceeding, to hear or decide any question of law in any action, suit, matter, or 40 proceeding at any place either within or without any such district.

5. Upon the application of any person who has obtained a decree or order of a county court for the recovery by or payment to him of any sum of money, whether by way of debt or damages or costs, the judge may make an order for the attachment of any debt owing or accruing to such execution debtor from any person at the time of such application residing within the jurisdiction of his court, and such order, when made absolute, shall have the same force and effect as a decree and may be executed in like manner, and such order may be made 10 whether the defendant has or has not a residence within the jurisdiction of the court of such judge at the time of the application for such order. For the purposes of this section the county of Dublin and the city of Dublin shall be deemed to be one and the same jurisdiction.

15 6.—(1) In all actions (other than actions falling within section thirty-three of the County Officers and Courts (Ireland) Act, 1877) in which the civil bill courts have jurisdiction the judge shall have power, where goods seized under a civil bill decree, or the produce or value thereof, are claimed by a person other than 20 the judgment debtor, upon the application of the sheriff or undersheriff or of the claimant, or of either party to the decree, whether the titles of the claimants thereto have a common origin or not, to hear and dispose of interpleader proceedings, and to make orders therein, and to stay all other proceedings pending such hearing, 25 and upon such hearing to settle and adjust damages and sheriff's fees and expenses; and it shall and may be lawful for the sheriff, where the value of such goods seized, as settled by an appraiser appointed by him, shall equal or exceed the amount of the decree under which same are so seized, upon the lodgment with him of 30 the amount of such decree, or the obtaining by him of security therefor, or in case the value of such goods so appraised shall not amount to the amount of such decree, then or upon the lodgment with him of the value thereof, or the obtaining by him of security for such value, to release said goods, and in case he shall be unable 35 to obtain such lodgment or security, then it shall be lawful for such sheriff to sell all or a sufficient portion of said goods if authorised so to do by an order of the judge, or, in the absence of the judge by an order of the clerk of the peace, which order they are hereby authorized to make, and the amount of such lodgment, 40 or the security or the proceeds of such sale, respectively, shall forthwith on receipt thereof by him be lodged in court to abide the decree or order of the judge.

Interpleader
order.

A.D. 1911.

(2) An interpleader civil bill may be issued by any person seeking relief from parties making adverse claims to any debt or money demands within the jurisdiction of the county court.

(3) The powers and authorities given by this section to the judge shall be exercised in the prescribed manner under rules to be made by the authority in this Act mentioned.

(4) All decrees or orders under section one hundred and fifty of the Civil Bill Courts (Ireland) Act, 1851, or under this section of this Act, shall be subject to appeal.

Orders
on sheriff
to make
returns.

7. The judge shall have power, upon the application of a party to a decree which has been lodged with the sheriff for execution, to make an order upon the sheriff or under-sheriff to make a return to such decree within a limited time, and the judge shall have power to enforce such order by fine or attachment.

Seizure
of goods
claimed by
third party.
[See 23 & 24
Vict. c. 126.
ss. 13 and 14,
Eng.]

8. When goods or chattels have been seized in execution by a sheriff or other officer under a decree, and some third person claims to be entitled, under a bill of sale or otherwise, to such goods or chattels by way of security for a debt, or under a hire purchase agreement, the judge may order a sale of the whole or part thereof upon such terms as to payment of the whole or part of the secured debt or otherwise as he shall think fit, and he may direct the application of the proceeds of such sale in such manner and upon such terms as to such judge may seem just.

Enforcement
of instalment
order.

9. Where an instalment order under the Debtors Act has been made against a defendant, and such defendant has, since such order has been made, changed his residence into another county, the order shall be capable of being enforced against such defendant by an order made under said Act by the county court judge of the county into which the defendant has so changed his residence.

Proof in
actions of
debt or other
liquidated
demand not
exceeding
20*l.* by affidavit.

Amendment
of section 59
of 40 & 41
Vict. c. 56.

10. Notwithstanding anything contained in section fifty-nine of the County Officers and Courts (Ireland) Act, 1877, the judge may, on the hearing of civil bill proceedings under that section, where the amount sought to be recovered by the civil bill does not exceed the sum of twenty pounds, and where the proceedings are in respect of commercial claims, which for the purposes of this section shall mean all claims for goods sold and delivered, goods bargained and sold, work and labour done, bills of exchange, promissory notes, accounts stated, money paid, or any of them, or suretyship for any of them, in case he deems it just and proper so to do, accept and act but only in open court on proof

by the affidavit mentioned therein to the like extent as he could on oral testimony of the same nature given before him, but such affidavit shall not be admissible on appeal. A.D. 1911.

11. The affidavit necessary to be made for the purpose of obtaining a renewal of a decree, dismiss, or order under the provisions of section one hundred and forty of the Civil Bill Courts (Ireland) Act, 1851, may be made by a clerk or agent of the party seeking renewal having personal knowledge of the facts of the case, and in cases where the plaintiff is a limited company or corporation or any body corporate, whether public or private, the affidavit necessary may be made by the secretary or other officer of such company having personal knowledge of the facts of the case. Affidavit for renewal of decree may be sworn by clerk or agent of party seeking renewal and by secretary of limited company.

12. Subject to rules under this Act any affidavit required to be used in any proceedings under any of the County Courts (Ireland) Acts, 1851 to 1889, or under this Act may be sworn before a commissioner for oaths or a justice of the peace for that part of the United Kingdom in which the affidavit is sworn, and the judge shall be entitled to take judicial notice of the signature of the person before whom the affidavit is sworn. Persons before whom affidavits may be sworn.

13. Subject to rules and orders under this Act every decree and dismiss of a county court judge in any action, and every affirmation or reversal of such decree or dismiss, save a decree for the possession of lands or tenements or an affirmation of such last-mentioned decree, shall be in full force and effect for two years from the date of the decree or dismiss, and it shall not be necessary to renew such first-mentioned decree or dismiss, or affirmation or reversal thereof, within the said period of two years unless there is some change in the party entitled to execution or liable thereto, and in such other cases as may be prescribed.

After the expiration of the said period of two years such first-mentioned decree or dismiss, or affirmation or reversal thereof, shall be renewable as provided by the Civil Bill Courts (Ireland) Act, 1851.

14. In all appeals under the provisions of the County Court Amendment (Ireland) Act, 1882, from decrees made by the Recorder of Dublin, the period for the giving and lodging of the notice and making the lodgment of money or perfecting security in the said Act mentioned shall, in undefended cases, be six clear days, to run from the actual day and date of the pronouncing of the decree, dismiss, or order appealed from. The time for appealing from Decrees of Recorder of Dublin shall be six days, to run from actual date of decision.

A.D. 1911.

or four clear days from the close of the sessions, whichever shall first happen; and in defended cases the period shall be six clear days from the giving to the person against whom such decree, dismiss, or order shall be made, or to his solicitor, the prescribed notice of the fact of the decree, dismiss, or order in question 5 having been pronounced, or four clear days from the close of sessions, whichever shall first happen; and the said Act shall be amended as provided by this section.

Justification
of recogni-
zances in
appeals.

15. The person or persons entering into the recognizance mentioned in section six of the County Court Amendment 10 (Ireland) Act, 1892, shall at the time of entering into such recognizance make, in the prescribed form, an affidavit of justification of such recognizance, and such affidavit shall be filed with the clerk of the peace at the time of the lodgment of the recognizance, and section six of the Act mentioned shall 15 be amended as provided by this section.

Appoint-
ment of
guardian or
next friend
of lunatics
and persons
of unsound
mind.

16. The powers given to the judge in section sixty-six of the County Officers and Courts (Ireland) Act, 1877, as to appointing guardian or next friend to an infant shall extend to a similar appointment in the case of lunatics and persons of 20 unsound mind, and section sixty-six of the Act mentioned shall be amended as provided by this section.

Prosecution
of appeal
after dis-
mant by
death.

17. If any person dissatisfied with any decree, dismiss, or order, whether adverse to him or in his favour, pronounced by any judge in the exercise of any jurisdiction conferred, whether before 25 or after the passing of this Act, upon him by any Act relating to county courts, gives notice of appeal, and if before or after such notice is perfected the death of any of the parties occurs, then, subject to rules and orders of the High Court, the appeal may be prosecuted within such time, upon such terms and conditions, and 30 in such manner as may be prescribed by such rules and orders as aforesaid: Provided that unless and until such rules and orders are made no such decree, dismiss, or order as last aforesaid shall be affected by the provisions of this section.

Defendant
may tender
in respect of
claims of
plaintiff.

18. It shall be lawful for the defendant in any action or 35 matter before or after the issue of the civil bill to tender to the plaintiff or to his solicitor such sum of money as the defendant shall think to be a full satisfaction for the demand of the plaintiff, and in case such tender shall be made after the issue of the civil bill, and that the defendant shall at the same 40

A.D. 1911.

time tender in addition the amount of the costs incurred by the plaintiff up to the time of such tender, and if such tender shall be refused by the plaintiff or by his solicitor, it shall be lawful for the defendant or his solicitor to lodge with the clerk of the 5 peace before or at the hearing of the action the amount so tendered in satisfaction of the demand of the plaintiff and for costs, if any, respectively, and if the plaintiff shall not recover in the action or matter more for debt or damages than the sum lodged in court as aforesaid in respect thereof, he shall 10 pay to the defendant the costs incurred by the defendant in the said action or matter, and an order shall thereupon be made by the judge for the payment of such costs by the plaintiff or for the payment of same out of the money so paid into court, when such costs shall have been taxed and ascertained: Provided 15 always that the provisions of this section shall not apply to any action or matter in which the title to any corporeal or incorporeal hereditament is in question unless the defendant shall at the time of such tender serve on the plaintiff a notice in the form to be prescribed admitting that the cause of action was well founded, 20 and disputing only the amount of damages claimed by the plaintiff.

19. Notwithstanding anything contained in section sixty-one of the Civil Bill Courts (Ireland) Act, 1851, no process, decree, or dismiss of any county court shall be null and void by reason 25 only that the addition or last known place of residence of any of the parties is not stated or is incorrectly stated therein; but such process, decree, or dismiss, or the proceedings thereunder, may be set aside either wholly or in part, or such process, decree, or dismiss may be amended or otherwise dealt with, as the judge 30 or judge on appeal, as the case may be, may think fit.

20. Section fifty-six of the County Officers and Courts (Ireland) Act, 1877, shall not apply to any case in which the plaintiff and defendant do not reside in the same civil bill jurisdiction, nor to any default or other civil bill process for recovery 35 of a debt for which proceedings at petty sessions could not have been taken at the time at which the proceedings by civil bill were commenced. The county of Dublin and the city of Dublin shall, for the purposes of this section, be deemed to be one and the same civil bill jurisdiction.

21. Rules to be made under this Act may provide for co- 40 partners, or for a person or persons trading in the name of a firm, to sue and to be sued in the name of their firm.

Amendment
of section 56
of 1877
Vest. c. 56.Omission or
misstatement
of addition
or residence
of a party
not to render
process,
decree, or
dismiss void.14 & 15 Vict.
c. 57.

A.D. 1911.

Firms of
solicitors.Appeals
at winter
assizes for
Belfast and
county
Antrim.Rule-making
authority.Audit of
account or
stamp duties.

22. It shall be lawful for proceedings in the civil bill courts to which this Act applies to be carried on and defended by solicitors in the name of a firm of solicitors; and it shall be lawful for any member of such firm to appear before the court in such proceedings, provided that the names of the members of the said firm shall be registered with the clerk of the Crown and peace of the said courts.

23. The judge or judges of the winter assize court which shall include the winter assize court for the county of the city of Belfast and for the county of Antrim shall have jurisdiction 10 to hear and determine civil bill appeals for the county of the city of Belfast and the county of Antrim in like manner as the judges of the spring and summer assizes.

24.—(1) The President of the Incorporated Law Society of Ireland and a member of the General Council of the Bar of 15 Ireland appointed for the purpose by that council shall be additional ordinary members of the rule-making authority mentioned in sections seventy-nine, eighty-three, and eighty-four of the County Officers and Courts (Ireland) Act, 1877, for the purpose of carrying that Act into effect, and that authority may 20 from time to time make, alter, or amend rules and prescribe schedules of costs and fees for proceedings under the County Courts (Ireland) Acts, 1851 to 1889, and under this Act, and also for proceedings on appeals from any court to a county court judge or recorder, so far as the costs of such last-mentioned 25 proceedings are not provided for under the Municipal Corporations (Ireland) Act, 1840.

(2) The President of the Incorporated Law Society of Ireland and a member of the General Council of the Bar of Ireland appointed for the purpose by that council shall be members of 30 the rule-making authority mentioned in section seventy-nine of the County Officers and Courts (Ireland) Act, 1877, for the purpose of making and amending rules, orders, and forms for the Recorders Courts.

(3) Section eighty-nine of the County Officers and Courts (Ireland) Act, 1877 (which provides for the submission to Parliament of rules and orders under that Act), shall apply, with the necessary modifications, to all rules and orders made under this section.

25. The Treasury may, with the concurrence of the Lord 40 Chancellor, make such rules and arrangements as may seem

requisite for the audit and report upon all accounts of stamp duties paid, fees received, moneys paid into court or lodged or in any manner received by any officer of a county court under any Act now in force or which may hereafter be enacted 5 relating to county courts. All such accounts shall be kept and exhibited or rendered in the prescribed manner.

A.D. 1911.
court fees,
moneys paid
into court,
&c.

26. In this Act, unless the context otherwise requires,— Interpreta-
tion.

The expression "judge" means a county court judge, and includes a recorder and a deputy county court 10 judge or a deputy recorder;

The expression "clerk of the peace" includes clerk of the Crown and peace, deputy clerk of the Crown and peace, and deputy clerk of the peace;

The expression "issue of the civil bill" means the delivery or the posting in a prepaid addressed envelope of the 15 civil bill to the civil bill officer for service;

The expression "action" means any proceeding commenced in a county court by ordinary civil bill, or by default process, or by any other originating document, or in 20 ejectment or replevin, or a remitted action;

The expression "decree" includes decree, dismiss, or order;

The expression "suit" means an equity suit;

The expression "matter" means any proceeding commenced by petition; and

25 The expression "prescribed" means prescribed by rules and orders under this Act.

27. This Act may be cited as the County Courts (Ireland) Short title
and construc-
tion. Act, 1911, and shall be construed as one with the County Courts (Ireland) Acts, 1851 to 1889, and may be cited with those Acts 30 as the County Courts (Ireland) Acts, 1851 to 1911.

28. Subject as in this Act mentioned this Act shall come Commence-
ment of Act. into operation on the *first day of November one thousand nine* ~~hundred and eleven~~.

29. The enactments specified in the schedule to this Act Repeals. are hereby repealed to the extent in the third column of that 35 schedule mentioned.

S C H E D U L E.

Acts Repealed.

Section and Chapter	Short Title	Term of Session
14 & 15 Vict. c. 51.	The Civil Bill Courts (Ireland) Act, 1862.	Session subsequent, term 2 and that in 1862 to 1863.
17 & 18 Vict. c. 96.	The Civil Bill Courts (Ireland) Amendment Act (Ireland), 1862.	Session subsequent.

10

County Courts
(Ireland).

A

B I L L

To amend the Law relating to County Courts in Ireland.

Presented by Mr. Brady,

supported by

Mr. Kelly, Mr. MacFaugh, Mr. Brady,
Mr. Moran, Mr. Moore, and Mr. Bedford.Ordered, by The House of Commons, to be Printed,
22 February 1911.

L.S. M.D. 1911.

PRINTED BY THE GOVERNMENT PRINTING OFFICE.
In London, Edinburgh, Belfast and Dublin, and
at Belfast, Cork, Dublin, and
Galway and Cork, Donegal, Derry, Londonderry,
and Monaghan, 1911.PRINTED BY JOHN AND JAMES SPOTTISWOODE, LTD.,
NEW BOND STREET, LONDON, AND
PRINTED IN THE IRISH GOVERNMENT LIBRARY.

[Print 14/1]